

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI
Transfer Civil Miscellaneous Petition No.606 of 2017

ORDER:

This is a wife's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw HMOP.No.32 of 2017 from the file of the Court of the learned Senior Civil Judge, Parvathipuram, and transfer the same to the Family Court or any other competent Court at Visakhapatnam for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri V. Surender Reddy, learned counsel for the petitioner-wife. Though the respondent-husband is served with notice, he has not entered appearance. I have perused the material record.

3. Shorn of unnecessary details, the case of the petitioner-wife and the submissions made on her behalf, in brief, are as follows: "After disputes and estrangement between the spouses, she is living at her parents' house at APSEB Colony, Seethammadhara, Visakhapatnam, along with a baby girl of about 1 ½ years age. She lodged a report against the respondent-husband and a case in Crime No.102 of 2017 for the offences punishable under Sections 498-A, 506 of IPC and Sections 3 & 4 of the Dowry Prohibition Act, was registered by the Women Police Station, Visakhapatnam. It is under investigation. The respondent-husband is required to appear before the said police in the said crime, which is under investigation. While so, she received notice in the above OP requiring her to appear before the Court at Parvathipuram, on 22.09.2017. She is not in a position to undertake travel all alone to Parvathipuram from Visakhapatnam along with the young child. There is nobody to assist her. On the date of every adjournment, she has to look for the assistance of one person to accompany her from Visakhapatnam, her place of residence, to Parvathipuram, which is at a distance of about 150 KMs. The journey time is

four hours. She has to take her father's help on every date of adjournment for attending the case in the Court at Parvathipuram. Her father is a small employee. The respondent/husband is not coming forward to pay traveling, lodging and incidental expenses. If the OP filed by the respondent-husband is also transferred to the file of a competent Court at Visakhapatnam, the said course would not only be beneficial to the parties but would also save their money and time. As per settled legal position, the wife's convenience must be looked at even though the OP is filed by the husband against the wife. She has a threat from the husband as he is an angry man of irresistible behaviour and as he is having a grouse against the petitioner for giving birth to a girl child and not a boy."

4. As noted, the respondent had not entered appearance though he is served with notice. Thus, the respondent is not resisting the petition filed by the petitioner.

5. The wife specifically pleads physical and financial inability to undertake travel from Parvathipuram to Visakhapatnam, which is at a distance of more than 150 KMs and which is not well connected to her place of residence. She further submits that she is a house wife and that her father is a small employee and that she has no support to make possible for her to attend the Court case before the Family Court, Parvathipuram, on each and every date of adjournment and that she has to look for assistance of one person on the date of each and every adjournment of the said case and that it is highly difficult for her to travel along with her young child and that if her request for transfer is not considered she and her daughter will be put to great hardship. The respondent/husband has not come forward and offered to pay traveling, lodging and incidental expenses of the petitioner wife and a companion, who may accompany her for attending the case instituted in the Court at Parvathipuram. In the Indian context an earning male person is certainly better placed as he

can undertake travel all alone safely at all times (day or night) when compared to a non-earning house wife. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. Further, as per the settled legal position and preponderance of authority, the convenience of wife shall prevail and shall be preferred unless there are special circumstances warranting taking a different view.

7. Having regard to the facts and the submissions of the petitioner and in the absence of any resistance from the respondent for granting the relief to the petitioner and as there are no special circumstances warranting taking a different view, this Court finds that the convenience of the wife and her young daughter is to be preferred over the convenience or inconvenience, if any, of the husband. Accordingly this Court holds that sufficient case is made out by the petitioner-wife for granting the relief and that granting the relief to the petitioner sub serves the ends of Justice.

6. In the result, the petition is allowed and the HMOP.No.32 of 2017 on the file of the Senior Civil Judge's Court, Parvathipuram, is withdrawn from the file of the said Court and is transferred to the file of the Family Court, Visakhapatnam, for trial and disposal in accordance with the procedure established by law. The transferor Court is directed to transmit, without delay, the entire duly indexed record of the case to the transferee Court.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

M.Seetharama Murthi, J

01.11.2017
Vjl